

Senate File 2329 - Introduced

SENATE FILE 2329
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3016)

A BILL FOR

1 An Act relating to evidence, including spousal privilege
2 and confidential communications between spouses, and the
3 admissibility of evidence in a prosecution for physical
4 abuse or a sexual offense upon or against a child, person
5 with an intellectual disability, person with a cognitive
6 impairment, or person with a developmental disability.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 622.9, Code 2022, is amended to read as
2 follows:

3 **622.9 Communications between husband and wife.**

4 1. Neither husband nor wife can be examined in any case
5 as to any communication made by the one to the other while
6 married, nor shall they, after the marriage relation ceases, be
7 permitted to reveal in testimony any such communication made
8 while the marriage subsisted.

9 2. Notwithstanding subsection 1, a husband or wife may be
10 examined about, and reveal in testimony, any of the following
11 communications:

12 a. Communications of threats against the husband or wife or
13 third party.

14 b. Communications that have been transmitted or revealed to
15 a third party.

16 3. Subsection 1 does not apply in any proceeding in which
17 either husband or wife is charged with an offense against the
18 other.

19 **Sec. 2. NEW SECTION. 622.31A Admissibility of evidence in**
20 **certain physical abuse and sexual offense cases.**

21 1. As used in this section:

22 *a. "Child"* means a person under fourteen years of age.

23 *b. "Cognitive impairment"* means a deficiency in a person's
24 short-term or long-term memory; orientation as to person,
25 place, and time; deductive or abstract reasoning; or judgment
26 as it relates to safety awareness.

27 *c. "Developmental disability"* means the same as defined
28 under the federal Developmental Disabilities Assistance and
29 Bill of Rights Act of 2000, Pub. L. No. 106-402, as codified in
30 42 U.S.C. §15002(8).

31 *d. "Intellectual disability"* means a disability of
32 children and adults who as a result of inadequately developed
33 intelligence have a significant impairment in ability to learn
34 or to adapt to the demands of society.

35 2. In a prosecution for physical abuse or a sexual offense

1 including but not limited to a sexual offense in violation of
2 section 709.2, 709.3, 709.4, 709.11, 709.12, 709.14, 709.15,
3 709.16, or 709.23, upon or against a child, a person with an
4 intellectual disability, person with a cognitive impairment, or
5 person with a developmental disability, the following evidence
6 shall be admitted as an exception to the hearsay rule if all of
7 the requirements in subsection 3 apply:

8 *a.* Testimony by the victim concerning an out-of-court
9 statement made by the victim to another person regarding the
10 occurrence of the offense.

11 *b.* Testimony by another concerning an out-of-court statement
12 made by the victim describing any act or detail pertaining to
13 any act which is an element of an offense charged for physical
14 abuse or a sexual offense against the victim.

15 3. The testimony described in subsection 2 shall be admitted
16 into evidence at trial as an exception to the hearsay rule if
17 all of the following apply:

18 *a.* The party intending to offer the statement does all of
19 the following:

20 (1) Notifies the adverse party of the intent to offer the
21 statement.

22 (2) Provides the adverse party with the name of the witness
23 through whom the statement will be offered.

24 (3) Provides the adverse party with a written summary of the
25 statement to be offered.

26 *b.* The court finds, in a hearing conducted outside the
27 presence of the jury, that the timing of the statement, the
28 content of the statement, and the circumstances surrounding
29 the making of the statement provide sufficient safeguards of
30 reliability.

31 *c.* The child, person with an intellectual disability, person
32 with a cognitive impairment, or person with a developmental
33 disability satisfies one of the following:

34 (1) Testifies at the trial.

35 (2) Is unavailable to testify but provides corroborative

1 evidence of the act which is the subject of the statement.

2 4. If a statement is admitted pursuant to this section,
3 the court shall instruct the jury that it is for the jury
4 to determine the weight and credibility to be given to the
5 statement, and in making that determination, the jury shall
6 consider the age and maturity of the child or the disability
7 of the person with an intellectual disability, person with
8 a cognitive impairment, or person with a developmental
9 disability; the nature of the statement whether consistent
10 or inconsistent; the circumstances under which the statement
11 whether consistent or inconsistent was made; and any other
12 relevant factors.

13 5. This section shall not prevent the admission of any
14 evidence concerning the forfeiture of property under chapter
15 809A.

16 EXPLANATION

17 The inclusion of this explanation does not constitute agreement with
18 the explanation's substance by the members of the general assembly.

19 This bill relates to evidence, including spousal privilege
20 and confidential communications between spouses, and the
21 admissibility of evidence in a prosecution for physical abuse
22 or a sexual offense upon or against a child, person with an
23 intellectual disability, person with a cognitive impairment, or
24 person with a developmental disability.

25 Current law relating to marital privilege allows
26 communication that occurs between spouses to remain
27 confidential and free from public exposure and protects spouses
28 from being required to testify against one another in a civil
29 or criminal case. Current law does not provide any exceptions.
30 The bill specifies the following exceptions to the marital
31 privilege: (1) communications of threats against the husband
32 or wife or third party, and (2) communications that have been
33 disclosed to a third party. The bill provides that the marital
34 privilege does not apply in any proceeding in which either the
35 husband or wife is charged with an offense against the other.

1 The bill provides that in a prosecution for physical abuse
2 or a sexual offense including but not limited to a sexual
3 offense in violation of Code section 709.2 (sexual abuse in
4 the first degree), 709.3 (sexual abuse in the second degree),
5 709.4 (sexual abuse in the third degree), 709.11 (assault with
6 the intent to commit sexual abuse), 709.12 (indecent contact
7 with a child), 709.14 (lascivious conduct with a minor),
8 709.15 (sexual exploitation by a counselor, therapist, or
9 school employee), 709.16 (sexual misconduct with offenders
10 and juveniles), or 709.23 (continuous sexual abuse of a
11 child), upon or against a child, a person with an intellectual
12 disability, a person with a cognitive impairment, or a person
13 with a developmental disability, testimony by the victim
14 concerning an out-of-court statement made by the victim to
15 another person regarding the occurrence of the offense and
16 testimony by another concerning an out-of-court statement made
17 by the victim describing any act or detail pertaining to any
18 act which is an element of an offense charged for physical
19 abuse or a sexual offense against the victim shall be admitted
20 into evidence at trial as an exception to the hearsay rule.
21 Such out-of-court statements shall be admitted if the party
22 intending to offer the statement notifies the adverse party
23 of the intent to offer the statement, provides the adverse
24 party with the name of the witness through whom the statement
25 will be offered, and provides the adverse party with a written
26 summary of the statement to be offered; the court finds in
27 a hearing conducted outside of the presence of the jury that
28 the timing of the statement, the content of the statement,
29 and the circumstances surrounding the making of the statement
30 provide sufficient safeguards of reliability; and the child,
31 person with an intellectual disability, person with a cognitive
32 impairment, or person with a developmental disability testifies
33 at the trial or is unavailable to testify but provides
34 corroborative evidence of the act which is the subject of the
35 statement.

1 The bill provides that if a statement is admitted pursuant
2 to the bill, the court shall instruct the jury that it is for
3 the jury to determine the weight and credibility to be given to
4 the statement, and in making that determination, the jury shall
5 consider the age and maturity of the child or the disability
6 of the person with an intellectual disability, cognitive
7 impairment, or developmental disability; the nature of the
8 statement; the circumstances under which the statement was
9 made; and any other relevant factor.

10 The bill shall not prevent the admission of any evidence in a
11 forfeiture proceeding brought under Code chapter 809A.

12 The bill provides definitions for "child", "cognitive
13 impairment", "developmental disability", and "intellectual
14 disability".